

<p style="text-align: right;">Page 298</p> <p>1 second conversation with Mr. Jensen about this</p> <p>2 Personix E-mail?</p> <p>3 A. I don't recall taking any notes</p> <p>4 from the conversation at this time.</p> <p>5 Q. Did Mr. Jensen take any notes to</p> <p>6 your best recollection?</p> <p>7 A. I don't recall that Mr. Jensen</p> <p>8 took any notes regarding our conversation at</p> <p>9 this time.</p> <p>10 Q. And so have you told me about all</p> <p>11 of the communications you had with Mr. Jensen</p> <p>12 about Personix that you can recall in</p> <p>13 reference -- by referencing this E-mail and</p> <p>14 that second conversation with Mr. Jensen?</p> <p>15 A. The E-mail and the second</p> <p>16 conversation are the only things that I recall</p> <p>17 speaking to Mr. Jensen about Personix at this</p> <p>18 time.</p> <p>19 Q. Did you talk to anybody else</p> <p>20 within Anthem FEP's management organization</p> <p>21 about your concerns related to Personix?</p> <p>22 A. I believe that I also mentioned</p> <p>23 this to Ms. Hinkle.</p> <p>24 Q. When?</p> <p>25 A. Subsequent to the E-mail, but I</p>	<p style="text-align: right;">Page 300</p> <p>1 payments to Personix might not comply with the</p> <p>2 FEP government contracts?</p> <p>3 A. Specifically, no.</p> <p>4 Q. Well, generally. Was there</p> <p>5 something we are missing that you haven't told</p> <p>6 us about concerning --</p> <p>7 A. Not that I can think of at this</p> <p>8 time.</p> <p>9 Q. Now, I heard you mention the name</p> <p>10 Print Mail earlier.</p> <p>11 A. Administar Print Mail.</p> <p>12 Q. What was Administar Print Mail?</p> <p>13 A. Administar Print Mail, to the best</p> <p>14 of my recollection, was a division or</p> <p>15 subsidiary of Anthem. They performed services</p> <p>16 such as mail handling, scanning, those sorts of</p> <p>17 things. I don't recall everything that they</p> <p>18 do. I think they may have also did -- they may</p> <p>19 have also done directory printing.</p> <p>20 Q. And do you know if there is any</p> <p>21 relationship between Personix and Administar</p> <p>22 Print Mail?</p> <p>23 A. You're testing my memory, but I</p> <p>24 don't recall if Administar Print Mail was the</p> <p>25 name of Personix after a change of organization</p>
<p style="text-align: right;">Page 299</p> <p>1 don't recall the specific date.</p> <p>2 Q. Do you remember where the</p> <p>3 conversation occurred?</p> <p>4 A. I do not recall where the</p> <p>5 conversation occurred at this time.</p> <p>6 Q. Do you remember what you said to</p> <p>7 Ms. Hinkle?</p> <p>8 A. My recollection is, Kathy, I sent</p> <p>9 an E-mail to Michael about possible impropriety</p> <p>10 in billing from Personix. I just want to make</p> <p>11 sure you are aware of it, so if you have any</p> <p>12 interest, you can look into it.</p> <p>13 Q. And what did Mrs. Hinkle say to</p> <p>14 you?</p> <p>15 A. I don't recall what Ms. Hinkle</p> <p>16 said at this time.</p> <p>17 Q. But that conversation with</p> <p>18 Ms. Hinkle and the conversation with Mr. Jensen</p> <p>19 is what had you so agitated on the date that</p> <p>20 you talked to Mary O'Rourke?</p> <p>21 A. I don't recall if that's the</p> <p>22 impetus for my agitation or not at this time.</p> <p>23 Q. Is there anything else you</p> <p>24 remember, any facts at all, related to your</p> <p>25 concerns that Personix might not -- that</p>	<p style="text-align: right;">Page 301</p> <p>1 or something. I don't recall at this point. I</p> <p>2 may be able to recall that, you know, at a</p> <p>3 later point. I just don't recall.</p> <p>4 Q. Well, I only have this point.</p> <p>5 A. I understand.</p> <p>6 Q. So what could you look at, what</p> <p>7 would you want to look at to refresh your</p> <p>8 memory?</p> <p>9 A. Probably if I could look at the</p> <p>10 affidavit, I may be able to recall that.</p> <p>11 Q. Now, was that affidavit written by</p> <p>12 you in your own handwriting?</p> <p>13 A. No.</p> <p>14 Q. It was written in conjunction with</p> <p>15 your lawyers; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. And you -- the actual typing was</p> <p>18 done at your lawyer's office, wasn't it?</p> <p>19 A. I don't know where the actual</p> <p>20 typing was done.</p> <p>21 Q. You didn't type it up, did you?</p> <p>22 A. No, but that's a different</p> <p>23 question. No, I did not type it up.</p> <p>24 Q. All right. It could have been</p> <p>25 typed up at a shopping mall for all we know,</p>

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1 but what you are saying is you didn't type the  
 2 affidavit that you signed?  
 3 A. That's correct.  
 4 Q. And the affidavit you signed was  
 5 after you had sat down with your lawyers and  
 6 reviewed what they had written up for you to  
 7 sign, right?  
 8 A. That's my recollection.  
 9 (Thereupon, Defendants' Exhibit 33  
 10 was marked for purposes of identification.)  
 11 Q. I'm going to hand you what's been  
 12 marked as Exhibit 33.  
 13 MR. KELLER: 33?  
 14 MR. DYER: I believe it's 33. The  
 15 last one was 32. This is my all time best,  
 16 guys, in terms of messing up the exhibit  
 17 numbers. I apologize.  
 18 Q. Now, with all that discussion,  
 19 what's the exhibit number in front of you?  
 20 A. 33.  
 21 Q. Handing you what has been marked  
 22 as Exhibit 33. Have you seen that document  
 23 before?  
 24 A. I never -- I don't recall ever  
 25 seeing that document.

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1 Q. This is a document that, again,  
 2 was, I will represent to you, was produced to  
 3 us by your counsel. And do you recognize at  
 4 the bottom the name N. Hayes underneath okay to  
 5 pay?  
 6 A. I do.  
 7 Q. Do you have any idea why this  
 8 document would have been one that you --  
 9 whether you took this document with you when  
 10 you left Anthem?  
 11 A. I don't recall.  
 12 Q. Now, do you see that okay to pay,  
 13 and then there's some stuff in the middle of  
 14 the invoice there?  
 15 A. I do.  
 16 Q. Does that -- is that basically  
 17 what was stamped on an invoice when an invoice  
 18 had to be approved by a manager in order to be  
 19 paid?  
 20 A. I don't recall.  
 21 Q. Did you ever sign any invoices  
 22 when you were a manager?  
 23 A. Yes, I recall signing some  
 24 invoices.  
 25 Q. And is this the kind of format

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1 that was used when you signed invoices for  
 2 approval?  
 3 A. It does not look familiar to me,  
 4 that stamp.  
 5 Q. But the okay to pay would suggest  
 6 that somebody stamped this invoice and made a  
 7 decision on paying the invoice, right?  
 8 MR. KELLER: Objection as to form.  
 9 THE WITNESS: There is no  
 10 signature. There is a printed person's name,  
 11 and there is no date. So to me, I would not  
 12 think that that invoice had been approved for  
 13 payment.  
 14 Q. But I guess what I'm trying to do  
 15 is distinguish this invoice from one where you  
 16 said it was automatically approved because of a  
 17 purchase order. Would you expect to see an  
 18 okay to pay stamp on an invoice that was  
 19 automatically approved by a purchase order?  
 20 A. I don't recall.  
 21 Q. You just don't know one way or the  
 22 other?  
 23 A. I don't know.  
 24 Q. And so you can't solve the mystery  
 25 of why this one invoice for 40 bucks from

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1 Personix was in your document production?  
 2 A. I can't.  
 3 Q. All right.  
 4 A. I don't even know -- I can't read  
 5 it. I don't know what it says.  
 6 Q. And as we leave the Personix  
 7 issue, you don't have any reason to conclude  
 8 that Anthem FEP in some way profited from  
 9 Personix billing Anthem for services that  
 10 weren't performed, do you?  
 11 A. I don't have any reason to believe  
 12 or disbelieve that Anthem FEP profited from  
 13 Personix's submission of invoices for services  
 14 not performed for FEP.  
 15 Q. Personix, you would be concerned,  
 16 might have profited, but you don't have any  
 17 reason to think Anthem FEP did, right?  
 18 A. Well, another division of Anthem  
 19 may have profited, because the charges, which  
 20 may have been legitimate, were not charged to  
 21 the appropriate contact -- contract.  
 22 Q. Now, I didn't see that referenced  
 23 in your E-mail. Is that a different issue for  
 24 Personix?  
 25 A. No.

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1 Q. I'm confused. Is that an issue  
2 you were concerned about when you were at  
3 Anthem FEP with Personix, even though it's not  
4 mentioned in your E-mail?

5 A. You had asked me if FEP profited  
6 from this practice, and my answer would be no.  
7 However, the division for whom services were  
8 provided that was not being billed would have  
9 lower expenses; therefore, they would have  
10 profited from Personix's mistaken invoice or  
11 misdirected invoice or whatever it may have  
12 been.

13 Q. So how -- is it your -- is it your  
14 position, and I don't see that in your E-mail,  
15 but is it your position that Personix was  
16 providing services and deserved to be paid,  
17 they were just providing services to one  
18 division and billing another?

19 A. I couldn't draw that conclusion  
20 from what I had seen. I'm purely speculating  
21 that if those services were actually delivered,  
22 then the division for which the services were  
23 performed were not being billed for it.

24 Q. So if we put speculation aside, as  
25 you sit here today, is it accurate to say you

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1 have no evidence to suggest that Anthem FEP or  
2 any part of the Anthem organization profited  
3 from the allegations you made against Personix,  
4 even if they were true?

5 MR. KELLER: Object as to form.

6 THE WITNESS: I have no evidence  
7 before me today.

8 Q. Well, even if you don't have it in  
9 front of you, do you have any that you could  
10 point to that you have gathered or collected  
11 over the years of -- since you brought this  
12 suit?

13 A. No, not that I can recall today.

14 Q. Now, is there anything else that  
15 we haven't talked about that you have  
16 information that would suggest there was any  
17 wrongdoing by Personix or Administar Federal  
18 Print Mail other than what we have talked about  
19 already?

20 A. Not that I can recall at this  
21 moment.

22 Q. Do you have any facts to suggest  
23 that Administar Print Mail was in any way  
24 engaged on a fraud or did something improper  
25 with regard to its billing practices?

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1 A. I thought I read recently about a  
2 settlement that Administar had made with the  
3 government for handling Medicare claims  
4 improperly, so that would be the only evidence  
5 that I would know is something from the press  
6 that stated that they had done something that  
7 was incorrect.

8 Q. Let's go back to the last day of  
9 employment that you had at Anthem FEP, which I  
10 believe was in the first week or so of April of  
11 1998, right?

12 A. Yes.

13 Q. At the time you left Anthem FEP,  
14 did you have any facts that caused you to be  
15 concerned that there was any irregularity or  
16 fraud going on with respect to Administar  
17 Federal Print Mail's dealings with Anthem FEP?

18 A. Not that I can recall at this  
19 moment.

20 Q. And are you aware of any documents  
21 that you had that would in any way have  
22 suggested that Administar Print Mail was in any  
23 way engaged in a wrongdoing or illegal conduct  
24 with respect to its business dealings with  
25 Anthem FEP?

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1 A. I have a recollection of something  
2 regarding Administar Print Mail, but I can't  
3 recall the details.

4 Q. Well, let me see if I can put it  
5 this way. If I was interviewing you on the  
6 last day that you were at work at Anthem FEP,  
7 and I asked you to give me a list of concerns  
8 that you had about compliance issues or illegal  
9 misconduct or fraudulent misconduct that might  
10 be going on with respect to the business of  
11 Anthem FEP, would you have put anything about  
12 Administar Print Mail on that list?

13 A. I can't recall, but if I could see  
14 the complaint that was filed, it may be able to  
15 jog my memory about that specifically.

16 Q. Do you have any recollection as  
17 you sit here today without reading the 90- or  
18 100-page complaint that would suggest that  
19 Administar Print Mail was engaged in  
20 wrongdoing?

21 A. Without looking at that document,  
22 I -- I can't recall at this moment. I may  
23 after I look at that document.

24 Q. Did you have any discussions with  
25 anyone within the Anthem organization or Anthem

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<p style="text-align: right;">Page 310</p> <p>1 FEP in specific at any time during the time</p> <p>2 that you were an employee of Anthem FEP related</p> <p>3 to concerns about the business practices or</p> <p>4 business dealings between Administar Print Mail</p> <p>5 and Anthem FEP?</p> <p>6 A. Again, through the passage of</p> <p>7 time, I don't recall specifically --</p> <p>8 Q. But you read --</p> <p>9 A. -- at this moment. At this</p> <p>10 moment.</p> <p>11 Q. You read your affidavit, as I</p> <p>12 think you told me, at least three times in the</p> <p>13 last 30 days, didn't you?</p> <p>14 A. I believe it was three times.</p> <p>15 Q. And as you sit here today, you</p> <p>16 don't have any recollection of that occurring?</p> <p>17 A. Late in the day, Mr. Dyer. I</p> <p>18 apologize.</p> <p>19 Q. We will sit here for as long as</p> <p>20 you think you need to. This is my only chance.</p> <p>21 A. I understand.</p> <p>22 Q. I am looking for any facts you</p> <p>23 know or have that relate to Administar Print</p> <p>24 Mail. And you have told me everything you can</p> <p>25 recall; is that right?</p>	<p style="text-align: right;">Page 312</p> <p>1 other Anthem accounts. They considered that</p> <p>2 part of their profit.</p> <p>3 Q. Who told you that?</p> <p>4 A. Ron Bectol.</p> <p>5 Q. Did anybody else tell you that?</p> <p>6 A. I had a conversation with Chet</p> <p>7 Spykowski.</p> <p>8 Q. Can you spell that one for us?</p> <p>9 A. Good luck on spelling it. I have</p> <p>10 no --</p> <p>11 Q. Spykowski?</p> <p>12 A. It's S P Y something. I can't</p> <p>13 recall.</p> <p>14 Q. And what -- I'm sorry. Go ahead.</p> <p>15 A. And I can't -- I don't recall if</p> <p>16 that was part of the discussion or not, but</p> <p>17 my -- to the best of my recollection, I made</p> <p>18 him aware that the FEP HMP program was a cost</p> <p>19 plus program, and that all we could turn over</p> <p>20 to OPM for cost in the HMP program were the</p> <p>21 actual costs minus rebates.</p> <p>22 And I -- I don't recall whether or</p> <p>23 not Chet specifically addressed what the rebate</p> <p>24 was or not, but I do recall having a discussion</p> <p>25 with him. It took place after the discussion</p>
<p style="text-align: right;">Page 311</p> <p>1 A. You have asked me not to</p> <p>2 speculate; therefore, I am not.</p> <p>3 Q. Thank you.</p> <p>4 A. I don't recall at this moment, but</p> <p>5 I suspect that if that was part of my</p> <p>6 complaint, maybe reviewing the affidavit or the</p> <p>7 complaint would be sufficient in order to jog</p> <p>8 my memory.</p> <p>9 Q. Let's talk about Anthem</p> <p>10 Prescription Management, or APM.</p> <p>11 A. Okay.</p> <p>12 Q. Do you have any facts or</p> <p>13 information, did you have, on the last day of</p> <p>14 your employment at Anthem FEP that caused you</p> <p>15 to believe that there was some illegal or</p> <p>16 noncompliant business practice going on at</p> <p>17 Anthem FEP in its dealings with Anthem --</p> <p>18 excuse me, with APM?</p> <p>19 A. Yes.</p> <p>20 Q. What facts did you have?</p> <p>21 A. I had through conversations with</p> <p>22 Anthem Prescription Management employees been</p> <p>23 told that the rebate that came to APM from</p> <p>24 pharmaceutical manufacturing companies was not</p> <p>25 being completely credited to the FEP account or</p>	<p style="text-align: right;">Page 313</p> <p>1 that we had regarding the overpayment of claims</p> <p>2 by FEP -- or, I'm sorry, APM.</p> <p>3 So I do recall having that</p> <p>4 conversation. I don't recall Chet telling me</p> <p>5 that they were not returning the entire rebate.</p> <p>6 Q. What did Ron Bectol tell you about</p> <p>7 APM's failure to return the entire -- or to</p> <p>8 credit the entire rebate to FEP?</p> <p>9 A. I had called him on several</p> <p>10 occasions trying to get a definitive answer as</p> <p>11 to whether or not the rebate was being credited</p> <p>12 back to FEP, to the HMP program. Ron did not</p> <p>13 know. Ron was the liaison, so to speak, I</p> <p>14 don't know his full title, between APM and the</p> <p>15 business divisions of Anthem. So, in essence,</p> <p>16 I was his customer.</p> <p>17 I had become aware of prescription</p> <p>18 benefit managers failing to return rebates</p> <p>19 through magazine articles, through FEP</p> <p>20 meetings, through OPM plan documents and</p> <p>21 bulletins, those kind of things. So I felt</p> <p>22 that I needed to make sure that any rebates</p> <p>23 that were being returned to Anthem Prescription</p> <p>24 Management found its way back to the charges</p> <p>25 and were a credit against any charges that we</p>



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1 were submitting to the government for  
 2 prescriptions paid for for their members.  
 3 Ron told me after several  
 4 conversations that he was having a hard time  
 5 getting a definitive answer, and finally he  
 6 told me that what he was able to find out was  
 7 that the rebates run between \$1 and \$10 per  
 8 prescription, that the average was about four,  
 9 and that as a general rule, APM credits a  
 10 dollar per prescription back to whoever their  
 11 customer would be, whether it's Ford Motors or  
 12 an administrative services only client or even  
 13 the commercial insurance division of Anthem,  
 14 and including FEP HMP.  
 15 Q. Anything else you recall Ron  
 16 telling you?  
 17 A. I asked him why he only returned  
 18 the dollar, and he said because the division  
 19 considers anything in excess of that their  
 20 profit. I said but you can do that with  
 21 everyone else if you want, you just can't do  
 22 that with the federal government program.  
 23 And he said, look, I'm just the  
 24 sales guy. I'm just the marketing rep, the  
 25 liaison. I don't have any control over that.

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1 I said, well, you need to make sure that people  
 2 know.  
 3 Q. And let's back up. Ron Bectol,  
 4 then, really was having to go ask other people  
 5 for -- to get the information you wanted,  
 6 right?  
 7 A. That's my understanding.  
 8 Q. What he told you was he didn't  
 9 have any personal knowledge, but he made some  
 10 inquiries to people to try and find out what  
 11 was going on with rebates, right?  
 12 A. That's my understanding.  
 13 Q. And Ron Bectol was somebody you  
 14 had worked with before at FEP, correct?  
 15 A. Correct.  
 16 Q. And he was then an APM employee?  
 17 A. Correct.  
 18 Q. And you have seen Ron Bectol since  
 19 the time you left Anthem FEP, haven't you?  
 20 A. Yes. Yes.  
 21 Q. You remain friends with him, don't  
 22 you?  
 23 A. Yes.  
 24 Q. You have sold him insurance at  
 25 Eppa Rixey, right?

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1 A. Yes.  
 2 Q. And have you sold him insurance in  
 3 some of your other businesses?  
 4 A. I don't think so. I bought some  
 5 from him recently.  
 6 Q. Where does Ron work now?  
 7 A. A company in Kentucky called  
 8 Business Benefits.  
 9 Q. So you and Ron have remained  
 10 social friends since the time you left, right?  
 11 A. On and off. He has younger  
 12 children; I have older children. He is going  
 13 to soccer games; we are going to high school  
 14 events, you know, so our -- I will run into him  
 15 at a Buffalo Wild Wings, and we may sit down  
 16 together and have wings or something.  
 17 Q. With regard to this Anthem FEP  
 18 rebate issue, when Ron told you that  
 19 information, what did you do?  
 20 A. I don't recall specifically what I  
 21 did, other than tell him that that practice had  
 22 to stop. I believe that I made Michael Jensen  
 23 aware of my findings, as well. And this had to  
 24 be probably in early '98, because it was  
 25 subsequent to the meetings that took place

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1 regarding the overpayment of the benefits. It  
 2 would be late '97 or early '98.  
 3 Q. Is there anyone else besides  
 4 Mr. Jensen that you recall telling what you had  
 5 learned from Ron Bectol?  
 6 A. I don't recall at this time.  
 7 Q. And have you told me everything  
 8 that you recall about your conversation with  
 9 Mr. Jensen concerning APM rebates?  
 10 A. Everything that I can recall at  
 11 this time.  
 12 Q. This whole APM rebate issue, I  
 13 think we said at the outset of this deposition,  
 14 relates to the FEP HMO product, right?  
 15 A. I believe that's the case, yes.  
 16 Q. And you had some responsibilities  
 17 for operating the FEP HMO product; is that  
 18 correct?  
 19 A. Yes, you could say that.  
 20 Q. And so it's accurate to say that  
 21 you viewed getting to the bottom of this rebate  
 22 issue as part of your duties and  
 23 responsibilities at FEP, right?  
 24 A. That's correct.  
 25 Q. And, in fact, when you were

1 STATE OF OHIO )

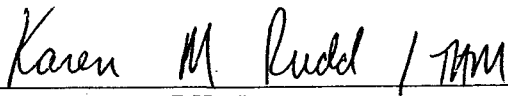
2 COUNTY OF MONTGOMERY ) SS: CERTIFICATE

3 I, Karen M. Rudd, a Notary Public within  
4 and for the State of Ohio, duly commissioned and  
5 qualified,

6 DO HEREBY CERTIFY that the above-named  
7 ANDREW M. GARNER, III, was by me first duly sworn  
8 to testify the truth, the whole truth and nothing  
9 but the truth; that said testimony was reduced to  
10 writing by me stenographically in the presence of  
11 the witness and thereafter reduced to typewriting.

12 I FURTHER CERTIFY that I am not a relative  
13 or Attorney of either party nor in any manner  
14 interested in the event of this action.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand and seal of office at Dayton, Ohio, on  
17 this 5th day of November, 2005.

18  
19   
20 KAREN M. RUDD  
21 NOTARY PUBLIC, STATE OF OHIO  
22 My commission expires 5-21-2007  
23  
24  
25